

### **REMARKS**

The Office Action dated April 24, 2001, included the following rejections, objections, and comments:

1. The disclosure was objected to because of a misspelling of the word "bicomponent".
2. Claim 9 was objected to because of an improper dependent form.
3. Claims 11-14 were objected to because of improper dependent form.
4. Claims 7 and 8 were rejected under 35 USC 112, first paragraph.
5. Claims 6-10 were rejected under 35 USC 112, second paragraph, as being indefinite.
6. Claim 8 was rejected under 35 USC 112, second paragraph, for the use of a Trademark.
7. Claim 9 was rejected under 35 USC 112, second paragraph, for lack of antecedent basis for the terms "said elastomeric base of said warp yarn".
8. Granting of priority based upon applications for related US patent applications US5,807,794, US 5,632,526, and US 5,533,789, was denied.
9. Claim 6 was rejected under 35 USC 102(b) as being anticipated by Gretzinger et al. (4,469,739).
10. Claim 6 was rejected under 35 USC 102(b) as being anticipated by McLarty, III (5,855,991).
11. Claims 6 and 10 were rejected under 35 USC 103(a) as being unpatentable over McLarty, III (5,533,789).
12. Claim 6 was rejected under 35 USC 103(a) as being unpatentable over Gretzinger et al. in view of McLarty, III '789.
13. Claim 10 was rejected under 35 USC 103(a) as being unpatentable over Gretzinger et al. or McLarty, III '789 as applied to Claim 6 above.

In response to these rejections, objections, and comments, and in view of the above Amendments, Applicant provides the following Remarks:

**1. Objection to the Disclosure**

The description has been amended to correct the misspelling of "biocomponent" to "bicomponent". Therefore, Applicant respectfully submits that the objection to the disclosure has been overcome by the amendment.

**2. Objection to Claim 9**

Claim 9 has been cancelled, and therefore Applicant respectfully submits that the objection has become moot.

**3. Objection to Claims 11-14**

Claim 11 has been amended to depend from Claim 6, thereby correcting the improper dependent form of Claim 11 and the subsequent dependent Claims 12-14.

Therefore, Applicant respectfully submits that the objection to Claims 11-14 has been overcome by the amendment.

**4. Rejection of Claims 7 and 8 Under 35 USC 112, First Paragraph**

Claims 7 and 8 were rejected because the limitations in Claim 7 of a bicomponent, core sheath, yarn was directed to the fill yarns, and the limitations of Claim 8 of a textured polyester were directed to the warp yarns.

In response, independent Claim 6 has been amended to use the more generic terms of first and second yarn sets, as in the original Claim 1 (now cancelled). Additionally, Claim 7 has been amended to further limit the first yarns that are monofilament elastomeric yarns to further be the bicomponent, core sheath yarns. Therefore, Applicant respectfully submits that the rejection to Claim 7 has been overcome by the amendment.

Claim 8 has been cancelled, and therefore Applicant respectfully submits that the rejection has become moot.

**5. Rejection of Claims 6-10 Under 35 USC 112, Second Paragraph**

Claims 6-10 were rejected because of the use of the phrase "polyester with an elastomeric base" was used in independent Claim 6. Applicant has amended independent Claim 6 to specify that the second yarns are "textured polyester yarns with and elastomeric base component". Therefore, Applicant respectfully submits that the rejection to Claims 6-10 have been overcome by the amendment.

**6. Rejection of Claim 8 Under 35 USC 112, Second Paragraph**

Claim 8 has been cancelled, and therefore Applicant respectfully submits that the rejection has become moot.

**7. Rejection of Claim 9 Under 35 USC 112, Second Paragraph**

Claim 9 has been cancelled, and therefore Applicant respectfully submits that the rejection has become moot.

**8. Priority Based Upon Prior Applications**

Priority based upon the applications resulting in US 5,807,794, US 5,632,526, and US 5,533,789, was not granted because US 5,807,794 did not disclose "a woven upholstery fabric with elastomeric, UV stabilized monofilaments in the warp direction and polyester fill yarns in the fill direction. However, Applicant respectfully submits that US 5,807,794 does adequately disclose an upholstery fabric 28 with elastomeric, UV stabilized warp yarns 20, polyester weft (or fill) yarns 22. Additionally, various other common aspects of the invention are adequately disclosed in the earlier application. Because of these common adequately disclosed elements, Applicant respectfully submits that it is entitled to the priority of these earlier applications to the extent that the matter originally disclosed is common with the present invention.

**9. Rejection of Claim 6 Under 35 USC 102(b) as Anticipated by Gretzinger**

Claim 6 has been amended to include the limitations from Claims 8 and 9, Applicant respectfully submits that Gretzinger et al. does not teach or suggest the combination of the limitations of the fill yarn being a textured polyester with an

elastomeric base component that is UV stabilized. Therefore, Applicant respectfully submits that Claim 6, as amended, is not anticipated by Gretzinger et al.

**10. Rejection of Claim 6 Under 35 USC 102(b) as Anticipated by McLarty, III '991**

Claim 6 has been amended to include the limitations from Claims 8 and 9, Applicant respectfully submits that McLarty, III '991 does not teach or suggest the combination of the limitations of the fill yarn being a textured polyester with an elastomeric base component that is UV stabilized. Therefore, Applicant respectfully submits that Claim 6, as amended, is not anticipated by McLarty, III '991

**11. Rejection of Claims 6 and 10 Under 35 USC 103(a)**

Claims 6 and 10 were rejected as being unpatentable over McLarty, III '789. It was indicated that McLarty, III '789 disclosed elastomeric monofilaments in the warp direction of the ELAS-TER monofilaments of the same type used in the present application. As such, it was reasoned that the monofilament in McLarty, III '789 would inherently be UV stabilized. However, as indicated on page 4, in line 9, of the present application, ELAS-TER monofilaments are not all UV stabilized. Therefore, the monofilaments in McLarty, III '789 would not have inherently been UV stabilized, as in the claimed invention.

Additionally, it was indicated that it would have been obvious to use the ELAS-TER monofilaments with the polyester and elastomeric yarn in a barathea weave, because the "woven fabric would inherently stretch less than a knit fabric of the same material due to the knit structure". However, there is no indication or motive for the need to have a less stretchy material. In fact, this notion is inconsistent with the use of elastomeric yarns which are intended to provide stretch. Therefore, there is no teaching or motivation for the combined references.

Finally, Claim 6 has been amended to include the limitations from Claims 8 and 9, Applicant respectfully submits that McLarty, III '789 does not teach or suggest the combination of the limitations of the fill yarn being a textured polyester with an elastomeric base component that is UV stabilized.

For these reasons, Applicant respectfully submits that Claim 6 would not have been obvious over Gretzinger et al. in view of McLarty, III '789.

**12. Rejection of Claim 6 Under 35 USC 103(a) *→ obvious***

Claim 6 was rejected as being obvious over Gretzinger et al. in view of McLarty, III '789. Although no reason was given for a motive to combine the two references or how the combination would render Claim 6 obvious, Applicant respectfully submits that the invention would not be obvious for the same reasons listed above with reference to McLarty, III '789. Additionally, Claim 6 has been amended to include the limitations from Claims 8 and 9, Applicant respectfully submits that McLarty, III '789 does not teach or suggest the combination of the limitations of the fill yarn being a textured polyester with an elastomeric base component that is UV stabilized. For these reasons, Applicant respectfully submits that Claim 6 would not have been obvious over Gretzinger et al. in view of McLarty, III '789.

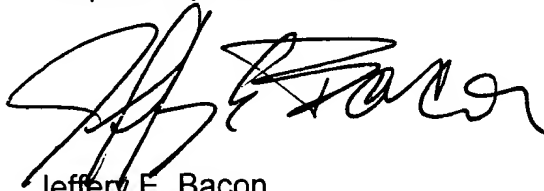
**13. Rejection of Claim 10 Under 35 USC 103(a)**

Applicant respectfully submits that the invention would not be obvious for the same reasons listed above with reference to Claim 6. Additionally, Claim 10 (via independent Claim 6) has been amended to include the limitations from Claims 8 and 9. Applicant respectfully submits that McLarty, III '789 does not teach or suggest the combination of the limitations of the fill yarn being a textured polyester with an elastomeric base component that is UV stabilized. For these reasons, Applicant respectfully submits that Claim 10 would not have been obvious over Gretzinger et al. in view of McLarty, III '789.

Applicant having addressed all of the rejections, objections, and comments in the latest Office Action, respectfully requests reconsideration and allowance of the pending claims in view of the above Amendments and Remarks. Applicant respectfully submits that the amendments submitted herewith do not add new matter to the application. In the event that the Examiner believes that the claims would be allowable with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jeffery E. Bacon", written over a horizontal line.

Jeffery E. Bacon  
Reg. No. 35,055

MILLIKEN & COMPANY  
920 Milliken Road, M-495  
Spartanburg, SC 29303  
(864) 503-1160

APPENDIX OF MARKED-UP AMENDED CLAIMS

WHAT IS CLAIMED IS:



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6. (Amended) A textile comprising:  
[warp] a set of first yarns interwoven with [fill] a set of second yarns, wherein:  
said [warp] first yarns comprising monofilament elastomeric UV stabilized yarn; and  
said [fill] second yarns comprising textured polyester yarns with an elastomeric base component, wherein the elastomeric base component being stabilized against ultraviolet irradiation.
7. (Amended) The textile according to Claim 6, wherein said [fill yarn comprises] second yarns comprise a bicomponent, core sheath yarn, and wherein said sheath component is characterized by a melting point which is at least 30F below the melting point of the core component.
8. (Cancelled)
9. (Cancelled)
10. (Amended) The textile according to Claim 6, wherein said [warp] first yarn set and said [fill] second yarn set are interwoven in a barathea weave.
11. (Amended) The textile according to Claim [11] 6, wherein said [warp yarn comprises] first yarns comprise a 2250 denier yarn.
12. (Amended) The textile according to Claim 11, wherein the weave density of said [warp yarn] first yarn set is about 20 ends per inch.
13. (Amended) The textile according to Claim 11, wherein said [fill yarn comprises] first yarns comprise a 2200 denier yarn.
14. (Amended) The textile according to Claim 11, wherein the weave density of said [fill yarn] second yarn set is about 20 picks per inch.

## APPENDIX OF MARKED-UP AMENDMENT PARAGRAPH

According to the preferred embodiment, the fabric according to the present invention is a woven fabric and most preferably a barathea weave. This fabric is preferably formed using a monofilament, ultraviolet stable, polyester warp yarn marketed by Hoechst Celanese Corporation under the trade designation ELAS-TER™ monofilament. In one potentially preferred embodiment, this warp yarn is a [biocomponent] bicomponent sheath/core yarn wherein the sheath component is characterized by a melting point which is at least 30°F below the melting point of the core component.